under sections 212 and 213 of the Civil Procedure Code an order of the Court is essential before the other party need attend for cross-examination.

I consider *Mr. Teh's* objection is well founded; and consequently, since no order of the Court for the attendance of the applicant for cross-examination, has been obtained, the affidavit of the applicant can be read.

(The remainder of the judgment deals with the merits of the application.)

The summons is dismissed with costs.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

June 10, 1940.

PUBLIC PROSECUTOR vs. LEE SEANG JOO.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 58 of 1940]

Customs Enactment (No. 5 of 1936), sections 30 and 113 (i) (a)—False declaration—No verification by signature—Person in charge.

The respondent was charged with having made a declaration under section 30 of the Customs Enactment which was false and therefore punishable under section 113 (i) (a). On appeal against his acquittal it was argued for the appellant that the words "required by this Enactment to be verified by signature only" in section 113 (i) (a) are annexed only to the words "other document" and not to the words "declaration, certificate" and that an offence could be committed without signature.

Held, the sub-section is ambiguous and the ambiguity must operate in favour of the accused.

For the respondent it was argued that he was not the "person in charge" and that only the "person in charge" could commit an offence under the section.

Held, if a person other than the "person in charge" chooses to make the declaration, an offence is committed.

CRIMINAL APPEAL.

T. V. A. Brodie, Deputy Public Prosecutor, for appellant.

J. S. Chabra, for respondent.

Murray-Aynsley, J.—This is a case under the Customs Enactment and gives rise to questions under sections 30 and 113.

It is alleged that the respondent made a declaration under section 30 and that this declaration was false, and that he thereby committed an offence under section 113 (i) (a). That part of the sub-section says "shall make or sign any declaration, certificate or other document required by this Enactment to be verified by signature only, the same being untrue or incorrect in any particular."

Now the first difficulty arises over the words "required by this Enactment to be verified by signature only." Examination of section 30 and the form settled under powers given by the Enactment do not require verification by signature and therefore if these words govern all the words used in this part of the sub-section, viz., "declaration, certificate or other document," then no offence has been committed.

The prosecution says that the words "required to be verified," etc., can only be attached to the words "other document." Difficulty is added by the use of the words "make or sign." It is clear that an offence is contemplated without signature. That might possibly mean that an offence had been committed when the person charged had made a declaration before he had verified it, if it could be contemplated that making the declaration and its verification are two separate acts. Construction of this part of the sub-section is not easy. I think that it is ambiguous and if that is so the ambiguity must operate in favour of the person charged. I think therefore that the respondent could not have been convicted under this part of the sub-section.

There was another point of law taken by the defence and it was the only one that the Magistrate dealt with. It was that the respondent was not the "person in charge," and therefore even if he made a declaration that was false he could not be prosecuted. That is I think wrong. The person in charge is the person required to make the declaration and a declaration is required to be made. If a person other than the person in charge chooses to make the declaration which is required to be made I think that an offence is committed even if the person making it is not required to make it.

Any other conclusion would obviously lead to absurd results.

There is also some difficulty on the facts as to what declaration the respondent actually made, that is did he limit his declaration to certain goods only of which he was actually in charge or did he declare the lorry-load generally and did it contain things of which he was not in charge.

It remains to be considered what order this Court should make. Although I have held that the respondent should not have been charged under section 113 (i) (a), it is possible that he committed an offence under some other part of the sub-section. If that were so it would be a case for amendment; the Magistrate might have allowed an amendment or have ordered a discharge not amounting to an acquittal. I think that the most convenient thing is to amend the finding into one of discharge not amounting to an acquittal. This will enable the prosecution if it is advisable to bring a charge under the appropriate part of the sub-section.

Finding amended to discharge not amounting to acquittal.

[APPELLATE CRIMINAL JURISDICTION]

HORNE, J.

June 14, 1940.

P. A. ANSELAM vs. PUBLIC PROSECUTOR.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 16 of 1940]

Criminal Procedure Code (Cap. 6), sections 107 and 329—Evidence Enactment (Cap. 10), sections 25 and 35—Witness—Previous unsworn statement—Effect thereof—Report to Police—Admission amounting to confession—Admissibility.

With the leave of the Magistrate the prosecution treated a witness as hostile and cross-examined him upon a previous unsworn statement.

Held, such cross-examination is not for the purpose of substituting the unsworn statement for the testimony given in open Court on affirmation. All that it can do is to prevent the Court giving any value to the sworn statement.

In order to connect the accused with drugs and syringes found in a certain house, the prosecution put in a report made by the accused. This report was information under section 329 of the Criminal Procedure Code, and did not necessarily call for an entry in the book kept under section 107 of the Code: but the entry was in fact made.

Held, that such an entry is an entry in an official book made by a public servant in the discharge of his official duty. If it states a fact in issue or a relevant fact it is itself a relevant fact under section 35 of the Evidence Enactment (Cap. 10). Where the statement in such report is an admission by an accused person, the person to whom such admission is made ought to be called in order that the defence should have an opportunity to cross-examine him. In the present case it was an admission of a fact which would tend to prove the guilt of the accused, and amounted to a confession. Having been made to a police officer below the rank of Inspector it is excluded by section 25 of the Evidence Enactment.

Cases referred to:—

(1) *Rex v. Harris* (1927) Cr. App. R. 144.

(2) *Barindra Kumar Ghose v. Rex,* I.L.R. 37 Cal. 467.

(3) *Rex v. Raji Sher Mohamed,* I.L.R. 46 Bom. 961.

(4) *Behari Lal v. Rex,* I.L.R. 8 Lahore 326.

CRIMINAL APPEAL.

S. C. Goho for appellant.

A. J. Grattan-Bellew, Deputy Public Prosecutor, for respondent.

Horne, J.—The appellant was convicted by the learned Magistrate at Tampin for having been in possession of two syringes and a deleterious drug contrary to section 17 (i) of Chapter 183 and was fined $300 or 6 months' imprisonment. He appeals against his conviction on the grounds that the Magistrate was wrong in law in holding there was evidence of possession in relying upon the evidence of Haji Abdul Halim; and was wrong in law and fact in calling upon the appellant for his defence; and in convicting him because the evidence as a whole should have raised a reasonable doubt in his mind.

Mr. Goho strongly attacked Haji Abdul Halim's evidence. The Magistrate has accepted the evidence of this witness to the effect that the rents of the house were sometimes paid by the accused. With the leave of the Magistrate the prosecution treated this witness as hostile and cross-examined him upon a previous unsworn statement after the witness had admitted he had made the statement. There is, however, nothing in the notes of evidence to indicate the nature of the statement. By inference it is contrary to what he had already sworn, viz., that only the woman paid the rent of the house. Then after this unrecorded cross-examination the notes read: "The witness now states that the rent was sometimes paid by the accused, sometimes by Muthu." There is no record of any attempt being made to ascertain why the witness gave such varying statements on an important matter. Such cross-examination is not for the purpose of substituting the unsworn statement for his testimony given in open Court on affirmation. All that such a cross-examination can do is to prevent the Court giving any value to his sworn statement that the woman always paid the rent. The Magistrate was clearly wrong in placing any reliance upon this witness. He should have been treated as negligible and the verdict found on the rest of the evidence, *Rex v. Harris*(1).